

1 Mark C. Mao, CA Bar No. 236165
2 Sean P. Rodriguez, CA Bar No. 262437
3 Beko Reblitz-Richardson, CA Bar No. 238027
4 **BOIES SCHILLER FLEXNER LLP**
5 44 Montgomery St., 41st Floor
6 San Francisco, CA 94104
7 Tel.: (415) 293-6800
8 mmao@bsfllp.com
9 srodriguez@bsfllp.com
10 brichardson@bsfllp.com

11 James Lee (admitted *pro hac vice*)
12 Rossana Baeza (admitted *pro hac vice*)
13 **BOIES SCHILLER FLEXNER LLP**
14 100 SE 2nd St., 28th Floor
15 Miami, FL 33131
16 Tel.: (305) 539-8400
17 jlee@bsfllp.com
18 rbaeza@bsfllp.com

19 Amanda K. Bonn, CA Bar No. 270891
20 **SUSMAN GODFREY L.L.P.**
21 1900 Avenue of the Stars, Suite 1400
22 Los Angeles, CA. 90067
23 Tel: (310) 789-3100
24 Fax: (310) 789-3150
25 abonn@susmangodfrey.com

26 *Attorneys for Plaintiffs*

27 **UNITED STATES DISTRICT COURT**
28 **NORTHERN DISTRICT OF CALIFORNIA**

29 CHASOM BROWN, MARIA NGUYEN,
30 WILLIAM BYATT, JEREMY DAVIS, and
31 CHRISTOPHER CASTILLO, individually
32 and on behalf of all other similarly situated,

33 Plaintiffs,

34 vs.

35 GOOGLE LLC,

36 Defendant.

William Christopher Carmody
(admitted *pro hac vice*)
Shawn J. Rabin (admitted *pro hac vice*)
Steven M. Shepard (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas,
32nd Floor
New York, NY 10019
Tel.: (212) 336-8330
bcarmody@susmangodfrey.com
srabin@susmangodfrey.com
sshepard@susmangodfrey.com

John A. Yanchunis (admitted *pro hac vice*)
Ryan J. McGee (admitted *pro hac vice*)
Michael F. Ram (admitted *pro hac vice*)
Ra O. Amen (admitted *pro hac vice*)
MORGAN & MORGAN
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Tel.: (813) 223-5505
jyanchunis@forthepeople.com
rmcgee@forthepeople.com
mram@forthepeople.com
ramen@forthepeople.com

Case No.: 5:20-cv-03664-LHK

**PLAINTIFFS' RESPONSE TO
GOOGLE'S REQUEST FOR JUDICIAL
NOTICE**

The Honorable Lucy H. Koh
Courtroom 8 – 4th Floor
Date: February 25, 2021
Time: 1:30 p.m.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs respectfully submit this memorandum of points and authorities in response to Google’s Request for Judicial Notice (“RJN”) and Google’s Memorandum of Points and Authorities in Support of its Request for Judicial Notice (“RJN Mem.”) (ECF No. 84). Plaintiffs agree that all of Google’s exhibits are judicially noticeable, but write separately to emphasize important deficiencies that limit the extent to which certain exhibits can be judicially noticed.

I. Exhibits 19 and 20

Exhibit 19 is the “How private browsing works in Chrome” website, and Exhibit 20 is the “Browse in private” website. As a threshold matter, Google incorrectly states that Exhibit 19 is “linked to the ‘Search & browse privately’ page that is referenced in the” First Amended Complaint. RJN Mem. at 7. In fact, Exhibit 19 is not directly linked to the “Search & browse privately” page. Instead, a user would have to maneuver away from the Search & browse privately page to access Exhibit 19. More importantly, Google does not identify the dates when Exhibits 19 and 20 became available. RJN at 3. Therefore, this Court may take judicial notice of their existence only as of the date when they were last accessed. *See Luviano v. Multi Cable, Inc.*, No. CV1505592BROFFM, 2017 WL 9360851, at *5 (C.D. Cal. Mar. 24, 2017) (explaining that websites “may have ‘varying degrees of . . . permanence, and accessibility’” and granting the request for judicial notice of a website “only as to its existence on the date the site was last accessed” (quoting *United States v. Kane*, No. 2:13-CR-250-JAD-VCF, 2013 WL 5797619, at *9 (D. Nev. Oct. 28, 2013))). Exhibit 19 and Exhibit 20 were last accessed on October 21, 2020. Decl. of Andrew H. Shapiro in Supp. of Google’s Mot. to Dismiss Pls.’ First Am. Compl. (ECF No. 83).

II. Exhibits 22-25

These exhibits are websites discussing Google policies for its analytics and advertising services. Again, Google does not identify the dates when these websites became available. RJN at 3-4. Therefore, this Court may take judicial notice of their existence only as of the date when they were last accessed. *See Luviano*, 2017 WL 9360851, at *5. Exhibits 22-25 were each last

1 accessed on October 21, 2020. Decl. of Andrew H. Shapiro in Supp. of Google's Mot. to Dismiss
2 Pls.' First Am. Compl. (ECF No. 83).

3 **III. CONCLUSION**

4 For the foregoing reasons, this Court should limit the extent to which it takes judicial notice
5 of Exhibits 19, 20, and 22-25.

6 Dated: November 18, 2020

By: /s/ Amanda Bonn
Amanda Bonn (CA Bar No. 270891)
abonn@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100

Mark C. Mao (CA Bar No. 236165)
mmao@bsfllp.com
Sean Phillips Rodriguez (CA Bar No. 262437)
srodriguez@bsfllp.com
Beko Rebitz-Richardson (CA Bar No. 238027)
brichardson@bsfllp.com
Alexander Justin Konik (CA Bar No. 299291)
akonik@bsfllp.com
BOIES SCHILLER FLEXNER LLP
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Telephone: (415) 293 6858
Facsimile (415) 999 9695

James W. Lee (*pro hac vice*)
jlee@bsfllp.com
Rossana Baeza (*pro hac vice*)
rbaeza@bsfllp.com
BOIES SCHILLER FLEXNER LLP
100 SE 2nd Street, Suite 2800
Miami, FL 33130
Telephone: (305) 539-8400
Facsimile: (305) 539-1304

William Christopher Carmody (*pro hac vice*)
bcarmody@susmangodfrey.com
Shawn J. Rabin (*pro hac vice*)
srabin@susmangodfrey.com
Steven Shepard (*pro hac vice*)
sshepard@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor

1 New York, NY 10019
2 Telephone: (212) 336-8330

3 John A. Yanchunis (*pro hac vice*)
4 jyanchunis@forthepeople.com
5 Ryan J. McGee (*pro hac vice*)
6 rmcgee@forthepeople.com
7 Michael F. Ram (*pro hac vice*)
8 mram@forthepeople.com
9 Ra O. Amen (*pro hac vice*)
10 ramen@forthepeople.com
11 MORGAN & MORGAN, P.A.
12 201 N Franklin Street, 7th Floor
13 Tampa, FL 33602
14 Telephone: (813) 223-5505
15 Facsimile: (813) 222-4736

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20
21
22
23
24
25
26
27
28
Attorneys for Plaintiffs